

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.3 OF 2006

IN

SUIT NO.1968 OF 2005

1.Parmanand T. Manwani & another. ...Petitioners.

vs.

1.Madan Devkishandas Bhatia & another. ...Respondents

Mr. Jai Chinoy with Sanjay Jain i/b. L.J.Law, for Petitioners.

Mr.M.P.Vashi, for Respondent no.1.

Mr.S.C.Naidu i/b. C.R.Naidu & Co., for Respondent no.2.

CORAM: D.K.DESHMUKH,J.

DATED: 14th March, 2007.

P.C.:-

1. By this petition, the petitioners allege that the respondent no.1 has willfully violated the order dated 22.7.2005. According to the petitioners, the respondent nos. 1 and 2 have also violated the order dated 25.8.2005. The facts that are relevant and material for deciding this contempt petition are that on

19.7.2005, the plaintiffs lodged the plaint in this Court claiming therein that the plaintiffs have entered into a memorandum of understanding with the defendant no.1. The plaintiffs sought declaration that the MOU dated 26.7.2002 between the plaintiffs and the defendant no.1 is binding on defendant no.1. The plaintiffs have also sought decree of specific performance of the MOU dated 26.7.2002. To this suit, the Maharashtra Housing and Area Development Authority is also joined as defendant no.2 and some reliefs are claimed against the defendant no.2 also. In this suit which was registered as suit no.1968 of 2005, a notice of motion no.2059 of 2005 was taken out and it was moved before the Court for ad-interim order. On that notice of motion on 22.7.2005, the Court passed an ad-interim order. In paragraph (1) of the order the Court noted that the learned Counsel appearing for plaintiffs have filed an affidavit stating that the notice of the today's application firstly attempted to be served on 20.7.2005 and thereafter on 21.7.2005 on defendant no.1 and that ultimately, the security guard of the first defendant was instructed by the first defendant to accept it. Thus, the Court proceeded on the assumption that the first defendant was served with the notice of hearing of the notice of motion. The Court ultimately passed an order granting ad-interim order in terms of prayer clause (b) and (c) of that notice of motion. Admittedly, prayer clause (c) of that notice of motion is not relevant for the present purpose. It is only the prayer clause (b) which is relevant. Prayer clause (b) as it stood on 22.7.2005 reads as under:-

“(b) that pending the hearing and final disposal of

the suit, Defendant no.1 by himself, his servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner assigning and/or transferring his right, title and interest in respect of the said plot described in Exhibit "A". to the plaintiff or from dealing with or disposing off the said plot described in Exhibit "A" to the Plaintiff or any part thereof or doing any acts, deeds or things so as to prejudice the plaintiff's right under the said MOU."

It is obvious from the order that the order was passed in the absence of defendant no.1. The present respondent no.2, admittedly, was not a party to the suit at that time. The petitioners in paragraph 3 of the petition states that it appears to the petitioners that though respondent no.1 did not appear at the hearing of the notice of motion on 22.7.2005 he was keeping watch on the proceedings in the Court and therefore, has knowledge of passing of order dated 22.7.2005. According to the petitioners, though the first respondent had knowledge of the order dated 22.7.2005, the first respondent by the document of the same date viz. 22.7.2005 assigned his rights in the suit property in favour of the respondent no.2. According to the petitioners, the respondent no.2 was joined as defendant no.3 by amending the plaint and the Court passed an order dated 25.8.2005. By that order the Court continued the ad-interim injunction against the defendant no.3 also. According to the averments in the petition, because according to the petitioners the respondent no.2 substituted the receipts for cheque by receipt for cash after 25.8.2005, he has also violated the

order dated 25.8.2005. The respondents have filed their reply. They have denied that they had any knowledge of the order dated 22.7.2005. According to them, they have not done anything contrary to the order dated 22.7.2005 or order dated 25.8.2005 after they acquired knowledge of this order, and the deed of assignment dt.22.7.2005 was executed by them without having knowledge of the order passed by the Court.

2. The learned Counsel appearing for petitioners refers to the conduct of the defendant no.1 before entering into the Memorandum of Understanding with the plaintiff as also his conduct after entering into the MOU and submits that the defendant no.1 had knowledge of the hearing of the matter before the Court on 22.7.2005 as also of the order passed on that date. He relies on the averments in the paragraph 3 of the petition to claim that the respondent no.1 was keeping watch on the proceedings in the Court and therefore, he had knowledge of the order of the Court. The learned Counsel also relies on the nature of the deed that the respondent no.1 has entered into with the Respondent no.2 to claim that the nature of the deed clearly indicates that the first respondent had knowledge of the order passed by the Court. He submits that by the agreement with the plaintiff, the plaintiff had agreed to pay much larger amount to the first respondent whereas he was assigning his right in favour of the second respondent for only Rs.25 lakhs and flat of 800 sq.ft. He further states that the payment was supposed to have been made by cheque but thereafter it is claimed that the payment is made in cash. He submits that

this nature of the transaction indicates that it was entered into with full knowledge of the order dt.25.8.2005. The learned Counsel relies on the averments made in paragraph 13 of the petition to claim that the respondent no.2 has committed willful breach of the order dated 25.8.2005. The learned Counsel appearing for respondent no.1 on the other hand submits that there is no material produced by the petitioners on record which would conclusively establish that the first respondent had any knowledge of the order dated 22.7.2005 the date on which the property has been assigned by the respondent no.1 in favour of respondent no.2. He submits that the first respondent entered into the transaction with the second respondent because the MOU which the plaintiffs have entered into with the respondent no.1 was terminated, the respondent no.1 wanted to dispose of his property. It is submitted that the contempt petition has been filed by the petitioners as a pressure tactic to pressurise the respondent no.1 to agree to transfer the property in his favour. So far as the respondent no.2 is concerned, it is submitted that there is no question of the order dated 22.7.2005 being binding on the second respondent because the second respondent was not a party to the suit when that order was made. The order is operating against the second defendant with effect from 25.8.2005 but there is nothing done by the respondent no.2 which can be said to be contrary to the order made by the Court dated 25.8.2005.

3. Now first taking up the allegations that the respondent no.1 has committed willful breach of the order dated 22.7.2005. The settled law is that

an order of temporary injunction made by the Court binds only parties to the suit against whom that order is made and it becomes effective on that order being served on the parties to the suit against whom the order is made. It is nobody's case that the order dated 22.7.2005 was served on the first respondent on that date. The knowledge of that order is being attributed to the first respondent on the basis of the following statements found in paragraph 3 of the petition:-

“It appears that though Respondent No.1 did not appear at the hearing of the application for ad-interim relief, Respondent No.1 was taking a watch on the proceedings in the Court and therefore, had knowledge of the passing of the order dated 22.7.2005.”

Perusal of the verification clause in the petition shows that the allegations made in paragraph 3 have been verified by the petitioner no.2 on the basis of his personal knowledge. Now if the petitioner had personal knowledge that the first respondent was keeping watch on the proceeding in the Court on 22.7.2005, he could not have said that “it appears” that the respondent no.1 was keeping watch on the proceedings in the Court. The verification of these pleadings on the basis of personal knowledge takes away reliability of these pleadings. The sentence beginning from “it appears that” cannot be verified on the basis of the personal knowledge. If one goes by the verification clause, it means that the petitioner no.2 had personal knowledge that the respondent no.1 was keeping watch on the proceedings in the Court. If that is so it was his duty

to disclose to the Court as to how he got the knowledge, did he see either the respondent no.1 keeping watch on the proceedings in the Court? or did he see any representative of the first respondent keeping watch on the proceedings of the Court on 22.7.2005? An action for civil contempt is an action of quasi criminal nature and therefore, there is duty cast on the petitioner who approaches the Court alleging that somebody is guilty of having committed contempt of the Court, to make statements which are exact and are correct. On the basis of the general statements and allegations, it cannot be alleged that somebody is guilty of committing contempt of the Court. Therefore, on the basis of the averments made in the petition it cannot be inferred that the first respondent had any knowledge of the order dated 22.7.2005 on the date of the order itself.

4. So far as the attempt made on behalf of the petitioners to attribute the knowledge of the order to the first respondent on the basis of the nature of the transaction, in my opinion, the Court cannot record conclusion that the first respondent had knowledge of the order only on the basis of the nature of the transaction. There can be more than one reason why the respondent no.1 entered into the transaction assuming that the transaction to be an imprudent transaction. The settled law is that the Court generally does not base its conclusion only on the inference. But the Court can base its conclusion on the inference to be drawn from the facts established on record but in such a situation the inference on which the Court is basing its conclusion must be the

only inference that can be drawn from the facts which have been established on record. If from the facts established on record more than one inference is possible, then the Court cannot base its final conclusion that somebody is guilty of committing contempt of the Court which is a quasi criminal proceeding on one of the inferences that can be drawn. In so far as the present case is concerned, according to the petitioner, as the defendant no.1 entered into a transaction for far lesser price in a hurry, inference should be drawn that he entered into the transaction because he had knowledge of the ad-interim order. Even assuming that the defendants entered into an imprudent transaction in a hurried manner, he could have entered into that transaction for several reasons including the reason that the plaintiff had filed the suit and had moved the Court for interim order. Thus, from the alleged conduct of the defendant no.1 of entering into the transaction hurriedly, several inferences are possible, one of the inferences can be that he had come to know that the Court had passed the ad-interim order. Therefore, in my opinion, looking from any point of view, it cannot be said with any amount of certainty that the first defendant had knowledge of the order dated 22.7.2005 on that date itself, and therefore, in my opinion, it cannot be said that, the first respondent had entered into the transaction with the second respondent in breach of the order dated 22.7.2005.

5. So far as the allegations that the respondent no.2 has willfully violated the order dated 25.8.2005 is concerned, perusal of the allegations made in paragraph 11 and 13 which are the only paragraphs on which the

reliance is placed shows that what is alleged is that because the receipt for cash was disclosed for the first time on 6.9.2005, the petitioners allege that the receipt was executed after 25.8.2005. Merely because the receipt was disclosed for the first time after 25.8.2005, an inference cannot be drawn that the receipt was prepared after 25.8.2005. Prayer clause (b) of the notice of motion has been quoted above. By that notice of motion the defendant nos. 1 and 3 are restrained from in any manner assigning or transferring their rights in the property. Even assuming that the second respondent issued a fresh receipt after 25.8.2005 it cannot be said that he assigned his rights in the property after 25.8.2005, and therefore, in my opinion, by no stretch of imagination it can be said that the second respondent has violated the order dated 25.8.2005. The petition is therefore, liable to be disposed of. It is accordingly, disposed of. Show cause notice issued against the respondent nos. 1 and 2 are discharged.

6. In this petition, admittedly, the respondent no.1 was not represented before the Court when that order was made. I find that the allegations that the respondent no.1 had knowledge of the order dated 22.7.2005, on that date, have not been made by the petitioner with full responsibility and after taking due care. In my opinion, therefore, the petitioners would be liable to pay cost to both the respondents. In my opinion, it will be appropriate as also in the interest of justice to direct the petitioner to pay compensatory cost to the respondents. It is accordingly, so ordered.